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In the

Supreme Court of the United States

IN RE: FRED RIGGS, DONNA SINGER and AL DICKSON

Petition for a Writ of Mandamus and Prohibition to the United States Court of Appeals for the Tenth Circuit

REPLY BRIEF TO RESPONDENT SAN JUAN HEALTH SERVICES DISTRICT'S BRIEF IN OPPOSITION

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NOW COMES THE PETITIONERS in reply to the San Juan Health Service District's respondents group brief in opposition to the Petitioners' Supreme Court rule 20 and 28 U.S.C. § 1651(a) and 28 U.S.C. § 1738 extraordinary writ of mandamus and writ of petition to enforce the Navajo Court orders under 28 U.S.C. § 1738's full faith and credit in this Court as follows:

PETITIONERS ARE BEING DENIED DUE PROCESS AND EQUAL PROTECTION OF THE LAWS OF THE UNITED STATES BASED UPON RACIAL ANIMUS

The Petitioners have gone through years of unnecessary, expensive, and delaying litigation in federal courts to obtain enforcement of Navajo orders, specifically on a racial and nationñal origin invidious discriminatory basis that presumes Navajo judges are incapable of distributing justice equally to mostly non-Indian respondents 1) who violate Navajo law within the reservation boundaries against persons injured while within Navajo boundaries, two of whom are Navajo citizens, and 2) who actively and voluntarily file non-compulsory counterclaims *seeking* the Navajo Court's protections. Undisputed by the Respondents. Neither do the respondents debate the factual findings of the Navajo Court, yet without the required *National Farmer's Union Ins. Co. et al v. Crow et al* 1985 U.S. LEXIS 27 *8-9, 471 U.S. 845 exhaustion of Navajo remedies, federal courts substituted themselves as new fact finders for NAVAJO law, overwhich federal courts lack all jurisdiction, to dismiss Truck and Attorney Ickes as parties. This mandamus enforcement order would require Truck and Attorney Ickes to abide by the Navajo law they broke and did not exhaust as a means to excuse themselves from the Navajo Orders. Truck and Attorney Ickes have not responded to this petition.

Petitioners are deprived of their day in Court

that they legitmately won.... *because their judge is Indian, the law they seek protections from is Indian, and the Federal Courts below, contrary to Congress, are refusing to treat Indian judgments equally with all other state, territorial or possession judgments over all people.* Invidious presumptions supplant Congressional findings and acts. Justice delayed is justice denied. *Arnett v. Kennedy*, 416 U.S. 134 (1974); 1974 U.S. LEXIS 125 *140. The harm is ongoing. [1] The respondents fail to rebut the Navajo Court factual findings that respondents were never denied due process in Navajo Court (Extra. Writ. App. 35a). *Undisputedly*, if these Navajo orders had been against all Indian respondents, this case would not be here now. The lack of federal enforcement for these Navajo orders in federal and 10th circuit courts demonstrates Navajo law and Congressional protections for Navajo law are worthless *unless* 28 U.S.C. § 1738 is enforced now.

28 U.S.C. § 1738 Aids This Court's Jurisdiction

Respondents fail to cite one authority that shows any prerequisites are required to be met prior to 28 U.S.C. 1738 full faith and credit enforcement of Indian territorial orders. § 1738 aids this Courts jurisdiction by making this Court enforce Navajo orders and by making this Court accessible to Indian Court parties, particularly in an emergency such as this is, promotes judicial economy by preventing years of appeals that equates to denial of due process.

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[1] Navajo patients are still believing they must pay for their publicly insured care because these respondents, who billed these non-English speaking Navajo patients, refuse to so much as publicly inform the patients that they can be seen without payment at Montezuma Creek Clinic, Utah. Extra. Writ App. 61a-69a, 145a-157a.

Respondents' Brief is Flawed Procedurally and Reads Like a Cross-Petition Rather than a Brief in Opposition

The Respondents can file a cross-petition, but failed to do so. The Supreme Court rule 15 allows for rewording of the question. Here, however, the Respondents reword the questions, and recolor facts by omissions, and fail to address squarely the legal questions of the Petitioners. Petitioners are forced to basically file a reply brief *and* brief in opposition to a *de facto* type cross-petition attacking the Navajo Nation Court Orders specifically because most of the respondents are non-Indian. Respondents fail to discuss point by point the law found in the cases they cite. The Petitioners have no way of knowing how to respond to case cites, and the Court is placed in the position of presuming the respondent's arguments. Such is not the foundation of due process and the respondents alleged arguments, should be disregarded as in violation of the rules and the Petitioners' petition should be granted.

Respondents Offer No Exclusions of this Court for § 1738 for enforcement of Congressionally-protected Navajo law

> " ....Such Acts, records and judicial proceedings [of states, territories or possessions] or copies thereof, so authenticated, *shall* have the same full faith and credit in **every** court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken. "

28 U.S.C. Sec. 1738. Emphasis Added.[2]

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[2] (The complete trial record of the Navajo Court, oral and written, sealed and certified is in the basement of the U.S. District court central division of Utah case no. 00 cv 0584 MacArthur et al v. San Juan county et al and available to this Court upon request.)

Citing to Respondents' *Mallard v. United States District Court*, 490 U.S. 296, (1989);1989 U.S. LEXIS 2232 the § 1738 word 'shall' is obligatory on "EVERY" court by *Mallard*'s definitions. *12-14. *Mallard* supports the Petitioners.

Respondents Cite Cases, Some Off Point, and Offer Little or no Argumentation Leaving ThisCourt to Presume Arguments For the Respondents while Denying the Petitioners the Due Process Right of Specifically Rebutting Their Unidentifiable Arguments

Other Respondents' cases for denying mandamus do not apply to 28 U.S.C. § 1738 enforcement. See, *Will v. U. S.* 389 U.S. 90 (1967) (criminal case with no 1738 involvement involves Court's discretion, not statute mandamus); *Allied Chemical Corp v. Daiflon, Inc*, 449 U.S. 33 (1980) fn. 3 (cuts *for the Petitioners* in that neither the Appellate Court nor Federal Court had any authority or discretion to dismiss Truck and Ickes *particularly without looking at the trial record*,); *Wilson v. Marchington*, 127 F.3d 805 (9th Cir. 1997), *cer denied*, 523 U.S. 1074 (1998) (respondents fail to *discuss Marchington*, identify what reasoning and points of law apply nor why *Marchington* should apply to *Navajo* rulings); *Halwood v. Cowboy Auto Sales, Inc.* 946 P.2d 1088 (N.M. App. 1997) (respondents fail to show this Court that this Court *denied cert* for *Halwood*, docket no. 98-858, Feb. 22, 1999, after *Marchington*, nor explain why New Mexico's reasoning on giving full faith and credit to Navajo orders should not apply to federal courts or this court under § 1738, or why *Halwood*'s reasoning is somehow defective for use in Federal courts over *Marchington*); *State ex rel Lambert v. King*, 538 S.E. 385, 388 (W.V. Ct. App. 2000) (respondents seek to use West Virginia case and statutory law, here, for Indian law and federal statutory mandates upon the Court. However, even under *King*,

if a Court is materially in error in law or involves subject matter jurisdiction, *King* supports the writ and petitioners view). Overall, the lack of specific argumentation (unlike the Petitioners' brief) deprives Petitioners of the due process to be able to respond and places the Court in the position of being the Respondents' advocate.

Respondents (1)fail to address Petitioners' arguments for Article I and II powers superceding this Court's Article III authority to define Indian Court jurisdiction (Pet. Brief. 23-25, 24); (2) fail to address that Indian law is superior in authority to state law (id and 19); (3) fail to address the statements of the federal district judge appearing to be biased (pet. brief 25) precluding fair enforcement below; (4)fail to address failure of the respondents to exhaust their Navajo remedies before being given any relief (Pet. Brief fn. 53); (5) fail to address that this Supreme Court defined Indian territory as one of the territories (Pet. Brief 21); (6) fail to address this Court's proclamation that municpalities are like any other natural person in *Cook County v. U. S. ex rel Chandler* 538 U.S. _____, slip opinion, March 10, 2003 docket no. 01-1572, (pet. brief 17-18) and *Jinks v. Richland County, South Carolina*, 538 U.S. _____ (April 22, 2003 slip opinion) Id. ; (7) fail to address the madates of international law for U.S. Indian Courts to equally apply justice to every one, without distinguishment based upon race or national origin (pet. brief pg. 14) ; and (8) fail to address the clearly stated intent of the Senate that Indian Courts are to be the Courts of presumption for Indian and non-Indian individuals (Pet. Brief 14.); (9) fail to address validity of the Navajo law as cited. Petitioners assert these arguments have all been conceded by the defendant district and district employees and officials individually, if the brief was

filed with District approval. [3]

Respondents Mistate Motives of the Petitioners

The splits between this Court's rulings and Congress' statutes, stare decisis prior to 1978, and numerous circuit courts rulings after *Nevada v. Hicks*, 2001 U.S. LEXIS 4669, 533 U.S. 353 (2001) disagreeing with *Hicks*, are ample grounds for hearing the appeal of a Indian subject matter case, such as has not been rejected in the last five years. However, the fact that the Petitioners' petition for certiorari 02-1253 was filed, and a petition for rehearing is filed, has no effect upon the 28 U.S.C. § 1738 requirements upon 'every' court for enforcement of the Navajo territorial orders. Respondents cite to none.

Another mistatement is "Petitioners.... *imply[ ]* ownership of the land [Montezuma Creek Clinic] by the Navajo Tribe." resp. brief. pg. 3 fn. 1. Petitioners *implied* nothing. The Respondents fail to contradict the FACTS that the money that the State - by Congressional *mandate*- holds in trust for Navajo welfare, comes from Navajo royalties, on Navajo land, from non-renewable recourses, for the sole use of Navajo enrolled members surrounding the clinic and land. Respondents do not debate the Petitioners position that Congress considers the land within Navajo jurisdiction because it is on land within Navajo borders under 18 U.S.C. § 1151.

Another misleading statement is Petitioners raised 'federal' civil rights claims in their complaint. Navajo law is unquestionably protected by Federal and

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[3] Congress was color blind when 28 U.S.C. § 1738 was passed and later interpreted in *United States ex rel. Mackey v. Coxe*, 59 U.S. 100 (1855);1855 U.S. LEXIS 670 *7-9 as applying to the Cherokee nation. In fact, respondents fail to recognize the most pertainent part of *Coxe's reasons* for granting full faith and credit to Cherokee orders, that the validity of the Cherokee's representative legislation are protected by Congress. LEXIS *7-9 applies to Navajo laws validity.

International law, as properly stated in the Navajo complaint. The Relief *sought here*, is purely Navajo law/Indian civil rights relief within the Navajo Court's ***exclusive*** jurisdiction. Respondents do not debate this. ***Respondents never debate*** *they ACTIVELY, VOLUNTARILY sought Navajo Court relief for their own common Navajo law fraud/theft claims.* See Extraordinary Writ (EW) App. 45a.

Lack of Jurisdiction to Grant Respondents' relief

Respondents could have filed a cross-petition and failed to do so. Without a cross-petition, this Court will not alter an order or deny relief to the Petitioners.[4] See , *Freytag v. Commissioner*, 501 U.S. 868, 894-895 (1991)(J. Scalia concurrence)(subject matter jurisdiction can be raised at any time, even sua sponte, even for the first time on appeal).

CONCLUSION

Based upon the foregoing, 28 U.S.C § 1738 and Congress have established no restrictions on § 1738

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[4] "Absent a cross-appeal, an appellee may "urge in support of a decree any matter appearing in the record, although his argument may involve an attack [*12] upon the reasoning of the lower court," but **may not** "alter the decree with a view either to enlarging his own rights thereunder or of **lessening the rights of his adversary**." United States v. American Railway Express Co., 265 U.S. 425, 435, 68 L. Ed. 1087, 44 S. Ct. 560 (1924); see also Union Tool Co. v. Wilson, 259 U.S. 107, 111, 66 L. Ed. 848, 42 S. Ct. 427 (1922). We recognized the latter limitation as early as 1796, see McDonough v. Dannery, 3 Dall. 188, 198, and more than 60 years ago we spoke of it as **"inveterate and certain,"** Morley Constr. Co. v. Maryland Casualty Co., 300 U.S. 185, 191, 81 L. Ed. 593, 57 S. Ct. 325 (1937)."

El Paso Natural Gas v. Neztsosie, 1999 U.S. LEXIS 3004,*11-12; 526 U.S. 473 Emphasis added.

Here, the defendants by rewording their issue statements seek to lessen the Indian law rights of the Petitioners in violation of Congressional mandates. As such, full faith and credit enforcement of the orders under § 1738 is entirely appropriate.

enforcement of orders by 'every' court, including this Court, nor provided any exceptions for this Court enforcing the orders under § 1738 for Indian Territorial Courts. Respondents show none either. Equality before the law dictates that a Writ of Mandamus enforcing the Navajo orders against the Respondents should issue without further delay.

A WRIT OF PROHIBITION IS APPROPIATE TO STOP ONGOING HARMS

Undisputedly, Petitioners' Petition is to stop ongoing harms. Extra. Writ. 58a-60a, 61a- 69a,145a-147a. Petitioners argue that under Utah law a municipal or quasi-municipal or County organization exists for the sole purpose of protecting the citizens and "achieving the ends of justice, an ultimate obligation that outweighs its narrower interest in prevailing in a lawsuit". *Frey v. Dept. of Health & Human Services*, 106 F.R.D. 32, 37 (E.D.N.Y. 1985) Utah Bar Ethics opinion 115.
http://www.utahbar.org/opinjions/html/115.html. Indeed, this Court has noted that States have no authority to authorize officials to violate the law and the official is personally responsible. *See*, *Ex Parte Young*, 1908 U.S. LEXIS 1726, *66-67; 209 U.S. 123.

Under the Rules of Professional Conduct there is no way one attorney can represent the government entity AND the proven wrongdoers that the entity has claims against and should be investigating and prosecuting. *Salt Lake County Comm'n v. Short*, 985 P.2d 899, par. 34 (Utah 2000) and Utah Bar Ethics Opinion 98-06 apply to ALL attorneys representing these entities. Respondents don't deny the Utah Supreme Court makes a clear distinction between a government organization's needs and the officials needs that, as here, are fully inherently conflicting. The Navajo facts are undebated. This means that the

organization with liabilities due to the wrongful official's/employee actions, has claims directly against the officials, minimally in their personal capacities. Utah Bar Ethics opinion 98-06.http://www.utahorg/opinions/html/98-6.html.

Such is an inherent and insurmountable conflict for which the entity *is entitled* to separate counsel and a voice in the litigation that this Court can order. Id. See, Utah Code § 17-53-227.

The Respondents fail to cite with any specific comments to Utah Rules of Professional Conduct rule 4.2[5] upon which they rely, *so again*, Petitioners can not respond and the Court is left to do the argumentation for the respondents. Respondants fail to cite any language that overturns Utah Bar Ethics opinions 98-06, 115, 115r. None exists.

The District's alleged counsel is bound to do 'minimal research' prior to signing a pleading. *See, Business Guides, Inc. v. Chromatic Communications Enterprises, Inc.* 1991 U.S. LEXIS 1297,*16-17;498 U.S. 533

> "The signature of an attorney or party constitutes a certificate by the signer that . . . to the best of the signer's knowledge, information, and belief formed *after reasonable inquiry* it is well grounded in fact . . . If a pleading, motion, or other paper is signed in violation of this rule, the court . . . shall impose upon the person who signed it . . . an appropriate sanction" (emphasis added).

Id. Emphasis Added.

Here, no such research at least since January 1, 2003 has been done. Under the 'unified defense' there

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[5] In fact, the language of rule 4.2 comments references the statutorily and Constitutionally protected interests language referenced in Opinions 115 and 115r.

can be (1) no 'reasonable investigation' if the wrongdoing officials usurp the entities' ability to control its own litigation under a 'unified defense'; (2) no candor to the tribunal or to the entity client or to the opposing parties; (3) voters are disenfrancished by attorneys who refuse to seek the authority and approval of elected officials and those they appoint; (4) settlement becomes impossible with the entity who is silenced by the wrongdoers; and (5) the administration of justice becomes a sham against the petitioners who can not enjoy the due process and equal protection right of petitioning and seeking redress of their wrongs from the Courts or government entiies obliged to 'achieve the ends of justice' separate from the wrongdoers. Silence and deception and lack of participation of the most controlling respondent, the organization, should not be supported or tolerated here any more than in *Business Guides*.

CONCLUSION

Based upon the foregoing, the Writ of Prohibition should issue to stop ongoing harms to petitioners' due process and equal protections and the administration of justice, contrary to fairness and equality found in *Business Guides, supra* that this Court has consistently upheld.

Respectfully Submitted,

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